

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARIUS SPRUCE and MIA SPRUCE,

Plaintiffs,

Case No. 13-cv-10711

v.

HONORABLE STEPHEN J. MURPHY, III

CHASE BANK and CCO MORTGAGE,

Defendants.

**ORDER ADOPTING REPORT
AND RECOMMENDATION (document no. 16) AND
DISMISSING THE COMPLAINT AGAINST CCO WITHOUT PREJUDICE**

On February 19, 2013, Plaintiffs Darius Spruce and Mia Spruce filed a pro se civil complaint against the assignee of their mortgage, Defendant JPMorgan Chase Bank, N.A. ("Chase") and its servicer, Defendant CCO Mortgage ("CCO") regarding the foreclosure and Sheriff's sale of their real property. The Court referred all pre-trial proceedings to a United States Magistrate Judge for resolution or recommendation. On February 3, 2014, the Court, adopting a Report and Recommendation ("Report") of the magistrate judge, granted Chase's motion for judgment on the pleadings. Order Adopting Report, ECF No. 14.

CCO never appeared in the action. The plaintiffs filed a purported "proof of service" on March 21, 2013, showing only that the summons and complaint were mailed to CCO by priority mail. "Certificate of Service," ECF No. 5. Significantly, it did not show that an authorized representative received or accepted service on behalf of CCO. On July 3, 2014, the magistrate judge entered an order directing the plaintiffs to "show cause in writing within 14 days of the date of this Order why [CCO] should not be dismissed without prejudice for failure to serve within the time limits set forth in Rule 4(m)." Order to Show Cause, ECF No.

15. The plaintiffs did not respond to the show cause order. On July 31, 2014, the magistrate judge issued a Report, recommending that the Court sua sponte dismiss the complaint against CCO without prejudice pursuant to Civil Rule 4(m).

Civil Rule 72(b) governs review of a magistrate judge's report and recommendation. De novo review of the magistrate judge's findings is only required if the parties "serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). Nevertheless, because a district judge always retains jurisdiction over a motion after referring it to a magistrate judge, he is entitled to review the magistrate judge's findings of fact and conclusions of law on his own initiative. *See Thomas v. Arn*, 474 U.S. 140, 154 (1985) (clarifying that while a district court judge need not review a report and recommendation "de novo if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard").

Because neither party filed objections to the Report, de novo review of the Report's conclusions is not required. Having reviewed the Report's analysis, in light of the record, the Court finds that its conclusions are factually based and legally sound. Accordingly, it will adopt the Report's findings and dismiss the complaint against CCO without prejudice.

ORDER

WHEREFORE, it is hereby **ORDERED** that the Report and Recommendation (document no. 16) is **ADOPTED**.

IT IS FURTHER ORDERED that the complaint against CCO is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: August 20, 2014

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 20, 2014, by electronic and/or ordinary mail.

s/Carol Cohron
Case Manager